

# 1: CV 01-0763

f-STND CLOSED  
A/R

U.S. District Court  
U.S. District Court of Eastern Pennsylvania (Philadelphia)

CIVIL DOCKET FOR CASE #: 00-CV-3174

NORTHLAND INSURANCE v. LINCOLN GENERAL INS., et al

Filed: 06/22/00

Assigned to: JUDGE PETRESE B. TUCKER

Demand: \$0,000

Nature of Suit: 110

Lead Docket: None

Jurisdiction: Diversity

Dkt# in other court: None

Cause: 28:1332 Diversity-Declaratory Judgment

NORTHLAND INSURANCE COMPANY  
PLAINTIFF

DAVID IRA ROSENBAUM  
[COR LD NTC]  
RUTHRAUFF & ARMBRUST, P.C.  
1601 MARKET STREET  
PHILADELPHIA, PA 19103-1913  
USA

FILED  
SCRANTON

v.

LINCOLN GENERAL INSURANCE  
COMPANY  
DEFENDANT

JONATHAN H. RUDD  
FAX 717-237-5300  
[COR LD NTC]  
MC NEES, WALLACE & NURICK  
100 PINE STREET  
P.O. BOX 1166  
HARRISBURG, PA 17108-1166  
USA  
TEL 717-237-5252

PER

RMV

MAY 04 2001

J.H.M. ENTERPRISES, INC.  
DEFENDANT

VERNICE L. STATTS  
DEFENDANT

ROBERT E. KRAPF  
DEFENDANT  
[term 09/15/00]

CHARLES M. MILLER  
RUBRIGHT, DOMALAKES, TROY &  
MILLER  
14 W. FRACK STREET  
P.O. BOX 9, LAW BLDG.  
FRACKVILLE, PA 17931-0009  
USA

Docket as of May 1, 2001 11:27 am

Page 1

A TRUE COPY CERTIFIED TO FROM THE RECORD

DATED: 5-1-01

ATTEST: *Rita L. Pollock*

Proceedings include all events.  
2:00cv3174 NORTHLAND INSURANCE v. LINCOLN GENERAL INS., et al

f-STND  
CLOSED A/R

UTE L. HETLAND CLARK, AS  
ADMINISTRATORS OF THE ESTATE  
OF KARIN CLIFFORD  
DEFENDANT  
[term 09/15/00]

CHARLES M. MILLER  
(See above)  
[COR LD NTC]

ROBERT E. KRAPF  
DEFENDANT  
[term 09/15/00]

CHARLES M. MILLER  
(See above)  
[COR LD NTC]

PATRICIA R. CLIFFORD, AS  
ADMINISTRATORS OF THE ESTATE  
OF ROBERT R. CLIFFORD  
DEFENDANT  
[term 09/15/00]

CHARLES M. MILLER  
(See above)  
[COR LD NTC]

SHERRILL J. MULLIGAN  
DEFENDANT

DENIS A. MULLIGAN  
DEFENDANT

Proceedings include all events.

2:00cv3174 NORTHLAND INSURANCE v. LINCOLN GENERAL INS., et al f-STND

CLOSED A/R

6/22/00 1 Complaint. filing fee \$150 receipt #735165 (tj) [Entry date 06/23/00]

6/22/00 -- Summons(es) 9 issued. Mailed to counsel on 6/23/00. (tj) [Entry date 06/23/00]

6/22/00 -- Standard Case Management Track. (tj) [Entry date 06/23/00]

7/17/00 2 Return of service executed as to DEFENDANT J.H.M. ENTERPRISES on 7/2/00. (fb) [Entry date 07/17/00]

7/17/00 3 Return of service executed as to DEFENDANT DENIS A. MULLIGAN, DEFENDANT SHERRILL J. MULLIGAN, DEFENDANT VERNICE L. STATTS on 7/11/00. (fb) [Entry date 07/17/00]

7/19/00 4 Affidavit of: Donald W. Good re: served summons and complaint upon TIMOTHY KIRK ON BEHALF OF DEFENDANT LINCOLN GENERAL INS. . Served by: personal service on 7/5/00 . (ldb) [Entry date 07/19/00]

7/31/00 5 Affidavit of: Kathleen Fox re: served summons and complaint upon DEFENDANT UTE L. HETLAND CLARK . Served by: service on 7/19/00. (gn) [Entry date 07/31/00]

8/2/00 6 ORDER, REASSIGNING FROM THE CALENDAR OF JUDGE WILLIAM H. YOHN JR. TO THE CALENDAR OF JUDGE PETRESE B. TUCKER . ( SIGNED BY CLERK OF COURT MICHAEL E. KUNZ ) 8/2/00 ENTERED AND COPIES MAILED . (ldb) [Entry date 08/02/00]

8/8/00 7 Affidavit of: John E. Glatz re: served summons and complaint upon DEFENDANT ROBERT E. KRAPF . Served by: personal service on 7/27/00 . (ldb) [Entry date 08/08/00]

8/17/00 8 STIPULATION AND ORDER, reset ANSWER DUE FOR 8/18/00 for LINCOLN GENERAL INS. (Attorney: JONATHAN H. RUDD) ( SIGNED BY JUDGE PETRESE B. TUCKER ) 8/17/00 ENTERED AND COPIES MAILED (ldb) [Entry date 08/17/00]

8/21/00 9 MOTION BY DEFENDANT LINCOLN GENERAL INSURANCE COMPANY, TO DISMISS FOR IMPROPER VENUE, CERTIFICATE OF SERVICE, BRIEF IN SUPPORT, CERTIFICATE OF SERVICE. (dt) [Entry date 08/21/00]

9/15/00 10 STIPULATION AND ORDER THAT PLFF DISMISSES ITS COMPLAINT AGAINST DEFTS ROBERT E. KRAPF AND UTE L. HETLAND CLAR, AS ADMINISTRATORS OF THE ESTATE OF KARIN CLIFFORD AND ROBERT E. KRAPF AND PATRICIA R. CLIFFORD AS ADMINISTRATORS OF THE ESTATE OF ROBERT R. CLIFFORD ONLY. IT IS STIPULATED AND AGREED THAT THE DISMISSED DEFTS WILL BE BOUND BY ANY DECISION OR JUDGMENT THAT THE COURT MAY REACH IN THE LAWSUIT WITH RESPECT TO THE OBLIGATIONS OF NORTHLAND INSURANCE CO. AND LINCOLN GENERAL INS. CO., ETC. ( SIGNED BY JUDGE PETRESE B. TUCKER ) 9/15/00 ENTERED AND COPIES MAILED AND FAXED. (gn) [Entry date 09/15/00]

Proceedings include all events.

2:00cv3174 NORTHLAND INSURANCE v. LINCOLN GENERAL INS., et al

f-STND

CLOSED A/R

9/18/00 11 Response by PLAINTIFF NORTHLAND INSURANCE in opposition to LINCOLN INSURANCE COMPANY'S MOTION TO DISMISS FOR IMPROPER VENUE ,, MEMORANDUM, Certificate of Service. (ldb) [Entry date 09/19/00]

10/3/00 12 BRIEF IN RESPONSE by DEFENDANT LINCOLN GENERAL INS. to PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT LINCOLN GENERAL INSURANCE COMPANY'S MOTION TO DISMISS FOR IMPROPER VENUE, Certificate of Service. (ldb) [Entry date 10/03/00]

3/29/01 13 MEMORANDUM AND ORDER THAT DEFT.'S MOTION TO DISMISS FOR IMPROPER VENUE IS DENIED. IT IS FURTHER ORDERED THAT THIS ACTION IS TRANSFERRED TO THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA, PURSUANT TO 28 U.S.C. SEC. 1406. THE CLERK SHALL TRANSFER THE RECORD TO THAT DISTRICT AND TERMINATE THIS CASE FROM THIS COURT'S DOCKET. (SIGNED BY JUDGE PETRESE B. TUCKER), 3/30/01 ENTERED AND COPIES MAILED AND FAXED BY CHAMBERS ON 3/29/01. (rp) [Entry date 03/30/01]

3/29/01 -- Case closed (kv) [Entry date 03/30/01]

4/30/01 -- Original record together with certified copy of docket entries forwarded to the Middle District of Pennsylvania. (rp) [Entry date 05/01/01]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

NORTHLAND INSURANCE COMPANY,

Plaintiff,

v.

C.A. No. 00 - CV - 3174

LINCOLN GENERAL INSURANCE COMPANY,  
J.H.M. ENTERPRISES, INC., VERNICE L.  
STATTS, ROBERT E. KRAPF and UTE L.  
HETLAND CLARK, as Administrators of the  
Estate of Karin Clifford and ROBERT E. KRAPF  
and PATRICIA R. CLIFFORD, as Administrators  
of the Estate of Robert R. Clifford, SHERRILL J.  
MULLIGAN, DENIS A. MULLIGAN,

Defendants.

The plaintiff Northland Insurance Company ("Northland"), for its complaint against the Defendants herein, alleges as follows:

**THE PARTIES AND JURISDICTION**

1. Northland is a Minnesota corporation with its principal place of business in Minnesota.
2. Upon information and belief, Lincoln General Insurance Company is a Pennsylvania corporation with its principal place of business at 3350 Whiteford Road, York, Pennsylvania.
3. Upon information and belief, J.H.M. Enterprises, Inc. ("JHM") is a Pennsylvania corporation with its offices located at 1200 Valmont Drive, N.W., Williamsport, Lycoming County, Pennsylvania, and it engaged in the business of transporting merchandise and products via trailer in the Commonwealth of Pennsylvania.

**FILED**  
JUN 22 2000  
MICHAEL E. KUHN, Clerk  
By \_\_\_\_\_  
Dep. Clerk

P6230

4. Upon information and belief, Vernice Lee Statts ("Statts") is an adult individual residing at 489 East Academy Street, Hughesville, Lycoming County, Pennsylvania.
5. Upon information and belief, Sherrill J. Mulligan and Denis A. Mulligan, are adult individuals who reside at 568 North Locust Street, Hazleton, Luzerne County, Pennsylvania.
6. Upon information and belief, Robert E. Krapf, is an individual residing at 305 East Broad Street, Tamaqua, Schuylkill County, Pennsylvania, and Ute L. Hetland Clark, is an individual residing at 1022 Villa Ridge Drive, Las Vegas, Nevada.
7. Upon information and belief, Krapf and Clark are the Administrators of the Estate of Karin Clifford, deceased, having been appointed by the Register of Wills of Schuylkill County, Pennsylvania, on November 22, 1995.
8. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332 as the amount in controversy exceed the sum of value of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, and is between citizens of different states and pursuant to 28 U.S.C. §2201.
9. Venue is appropriate in this forum pursuant to 28 U.S.C. §1391(a) & (c).

**GENERAL ALLEGATIONS**

10. On November 17, 1995 Statts was an employee and/or agent of JHM.
11. On November 17, 1995 Statts was dispatched by JHM to pick up a load on behalf of JHM.
12. On November 17, 1995, Statts was driving a 1979 Freightliner with Serial Number CA213HM160222 ("the Tractor") and a 1980 Great Dane Trailer ("the Trailer").

13. On November 17, 1995, the Tractor and Trailer driven by Statts was involved in an accident with a vehicle operated by Robert Clifford and a vehicle operated by Sherill Mulligan ("the Accident").
14. At the time of the Accident, the Tractor and Trailer were owned by Jay McCormick of JHM.
15. At the time of the Accident, Statts was not operating the Tractor or Trailer in the business of Woolever Brothers Transportation Inc. ("Woolever").
16. Krapf and Clark, as administrators of the Estate of Karin Clifford, and Krapf and Patricia R. Clifford as administrator of the Estate of Robert R. Clifford have brought a lawsuit against JHM, Vince Lee Stats, Woolever among others ("the Clifford action") arising out of the accident.
17. The accident resulted in the deaths of Karin Clifford and Robert R. Clifford.
18. The plaintiffs in the Clifford Action have demanded a total of \$2 million.
19. Sherrill J. Mulligan and Denis A. Mulligan have brought a lawsuit against JHM, Vince Lee Stats and Woolever ("the Mulligan action") arising out of the accident.
20. The plaintiffs in the Mulligan action have demanded \$175,000.
21. Lincoln General issued a policy of insurance bearing policy number PAP 1857700495 to JHM that was in effect at the time of the Accident (the "Lincoln General Policy").
22. Northland issued a policy of insurance bearing policy number TF209197 to Woolever that was in effect at the time of the Accident (the "Northland Policy").

**COUNT ONE**

23. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 19 with the same force and effect as though fully set forth at length herein.
24. The Lincoln General Policy lists the Tractor as a covered auto.
25. The Lincoln General Policy provides coverage for the Tractor.
26. The Lincoln General Policy lists the Trailer as a covered auto.
27. The Lincoln General Policy provides coverage for the Trailer
28. Pursuant to the terms of the Lincoln General Policy, JHM is an insured under the Lincoln policy.
29. Pursuant to the terms of the Lincoln General Policy, Statts is an insured under the Lincoln policy.
30. Pursuant to the terms of the Lincoln General Policy, Woolever is an insured under the Lincoln policy.
31. The Lincoln General Policy provides coverage for the liability, if any, of JHM, Statts and Woolever arising from the Accident.

WHEREFORE, Northland requests a judicial declaration that:

1. Lincoln General provides coverage for JHM, Statts and Woolever in the Clifford Action and the Mulligan Action (collectively "the Underlying Actions").
2. Any coverage obligation owed by the Northland policy in the Underlying Actions is excess to the Lincoln policy and is not triggered until the Lincoln policy is exhausted.

3. Northland is entitled to reimbursement from Lincoln for all costs in defending the Underlying Actions.

**COUNT TWO**

32. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 28 with the same force and effect as though fully set forth at length herein.
33. The Lincoln Policy and the Northland Policy both contain the following "other insurance" provision:

**5. OTHER INSURANCE ---PRIMARY AND EXCESS INSURANCE PROVISIONS**

- a. This Coverage Form's Liability Coverage is primary for any covered "auto" while hired or borrowed by you and used exclusively in your business as a "trucker" and pursuant to operating rights granted to you by a public authority. This Coverage Form's Liability Coverage is excess over any other collectible insurance for any covered "auto" while hired or borrowed from you by another "trucker". However, while a covered "auto" which is a "trailer" is connected to a power unit, this Coverage Form's Liability Coverage is:
  - (1) On the same basis, primary or excess, as for the power unit if the power unit is a covered "auto".
  - (2) Excess if the power unit is not a covered "auto".
- b. Any Trailer Interchange Coverage provided by this Coverage Form is primary for any covered "auto".
- c. Except as provided in paragraphs a. and b. above, this Coverage Form provides primary insurance for any covered "auto" you own and excess insurance for any covered "auto" you don't own.
- d. Regardless of the provisions of paragraphs a, b and c above, this Coverage Form's Liability Coverage is primary for any liability assumed under an "insured contract".

- e. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering the same basis.

34. At the time of the Accident, the Tractor and Trailer were being operated in the business of JHM.

35. At the time of the Accident, the Tractor and Trailer were not being operated in the business of Woolever.

36. The Lincoln General Policy provides primary coverage.

37. Any coverage provided by Northland for the Accident is excess to the coverage provided by Lincoln General.

WHEREFORE, Northland requests a judicial declaration that:

1. Lincoln General provides coverage for JHM, Statts and Woolever in the Clifford Action and the Mulligan Action (collectively "the Underlying Actions").
2. Any coverage obligation owed by the Northland policy in the Underlying Actions is excess to the Lincoln policy and is not triggered until the Lincoln policy is exhausted.
3. Northland is entitled to reimbursement from Lincoln for all costs in defending the Underlying Actions.

**COUNT THREE**

35. Northland has spent \$ 51,769.94 defending Woolever in the Clifford Action and the Mulligan Action.

1. Lincoln General provides coverage for JHM, Statts and Woolever in the Clifford Action and the Mulligan Action (collectively "the Underlying Actions").
2. Any coverage obligation owed by the Northland policy in the Underlying Actions is excess to the Lincoln policy and is not triggered until the Lincoln policy is exhausted.
3. Northland is entitled to reimbursement from Lincoln for all costs in defending the Underlying Actions.

By:



---

David Ira Rosenbaum, Esquire (52859)  
Ruthrauff & Armbrust, P.C.  
1601 Market Street  
16<sup>th</sup> Floor  
Philadelphia, PA 19103  
(215) 567-3700

Of Counsel:

Ira Lipsius, Esquire  
Schindel Farman & Lipsius  
225 West 34<sup>th</sup> Street  
New York, NY 10122

Attorneys for Plaintiff Northland Insurance Company

Dated: June 22, 2000

JS 44

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## CIVIL COVER SHEET

00-W-3174

**I. (a) PLAINTIFFS**

Northland Insurance Company  
1295 Northland Drive  
St. Paul, MN 55120-1146

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)**

Ramsey

88888

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

David Ira Rosenbaum, Esquire  
Ruthrauff & Armbrust, P.C.  
1601 Market Street, 16th Floor  
Philadelphia, PA 19103 (215) 567-3675

**II. BASIS OF JURISDICTION**

(PLACE AN X IN ONE BOX ONLY)

|  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)        |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> Diversity (Indicate Citizenship of Parties in Item III) |

**IV. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.

This is a declaratory judgment action premised upon diversity jurisdiction under 28 U.S.C. Section 1332.

**V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)**

| CONTRACT  | TORTS  | FORFEITURE/PENALTY   | BANKRUPTCY   | OTHER STATUTES   |
|---|--|--|--|--|
| <input type="checkbox"/> 100 Insurance  | <b>PERSONAL INJURY</b>                                       | <input type="checkbox"/> 610 Agriculture                                 | <input type="checkbox"/> 422 Appeal 28 USC 158                   | <input type="checkbox"/> 400 State Reapportionment                                     |
| <input type="checkbox"/> 120 Marine   | <input type="checkbox"/> 310 Airplane                        | <input type="checkbox"/> 620 Other Food & Drug                           | <input type="checkbox"/> 423 Withdrawal 28 USC 157               | <input type="checkbox"/> 410 Antitrust   |
| <input type="checkbox"/> 130 Miller Act   | <input type="checkbox"/> 315 Airplane Product Liability      | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <b>PROPERTY RIGHTS</b>   | <input type="checkbox"/> 430 Banks and Banking   |
| <input type="checkbox"/> 140 Negotiable Instrument                                | <input type="checkbox"/> 320 Assault, Libel & Slander        | <input type="checkbox"/> 365 Personal Injury - Product Liability         | <input type="checkbox"/> 820 Copyrights                          | <input type="checkbox"/> 450 Commerce/ICC Rates/etc.                                   |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment    | <input type="checkbox"/> 330 Federal Employers' Liability    | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  | <input type="checkbox"/> 830 Patent                              | <input type="checkbox"/> 460 Deportation   |
| <input type="checkbox"/> 151 Medicare Act   | <input type="checkbox"/> 340 Manne                           | <input type="checkbox"/> 370 Other Fraud                                 | <input type="checkbox"/> 840 Trademark                           | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations            |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 345 Manne Product Liability         | <input type="checkbox"/> 371 Truth in Lending                            | <b>SOCIAL SECURITY</b>   | <input type="checkbox"/> 810 Selective Service   |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits        | <input type="checkbox"/> 350 Motor Vehicle                   | <input type="checkbox"/> 380 Other Personal Property Damage              | <input type="checkbox"/> 861 HIA (1395f)                         | <input type="checkbox"/> 850 Securities/Commodities Exchange                           |
| <input type="checkbox"/> 160 Stockholders' Suits                                  | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 385 Property Damage Product Liability           | <input type="checkbox"/> 862 Black Lung (923)                    | <input type="checkbox"/> 875 Customer Challenge 12 USC 3410                            |
| <input type="checkbox"/> 190 Other Contract                                       | <input type="checkbox"/> 360 Other Personal Injury           | <b>LABOR</b>   | <input type="checkbox"/> 863 DIWC/DIWV (405(g))                  | <input type="checkbox"/> 891 Agricultural Acts   |
| <input type="checkbox"/> 195 Contract Product Liability                           | <b>CIVIL RIGHTS</b>  | <input type="checkbox"/> 710 Fair Labor Standards Act                    | <input type="checkbox"/> 864 SSID Title XVI                      | <input type="checkbox"/> 892 Economic Stabilization Act                                |
| <b>REAL PROPERTY</b>  | <input type="checkbox"/> 441 Voting                          | <input type="checkbox"/> 720 Labor/Mgmt. Relations                       | <input type="checkbox"/> 865 RSI (405(g))                        | <input type="checkbox"/> 893 Environmental Matters                                     |
| <input type="checkbox"/> 210 Land Condemnation                                    | <input type="checkbox"/> 442 Employment                      | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act      | <b>FEDERAL TAX SUITS</b>   | <input type="checkbox"/> 894 Energy Allocation Act                                     |
| <input type="checkbox"/> 220 Foreclosure  | <input type="checkbox"/> 443 Housing/ Accommodations         | <input type="checkbox"/> 740 Railway Labor Act                           | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 895 Freedom of Information Act                                |
| <input type="checkbox"/> 230 Rent Lease & Ejectment                               | <input type="checkbox"/> 444 Welfare                         | <input type="checkbox"/> 790 Other Labor Litigation                      | <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609       | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |
| <input type="checkbox"/> 240 Torts to Land  | <input type="checkbox"/> 440 Other Civil Rights              | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act                |  | <input type="checkbox"/> 950 Constitutionality of State Statutes                       |
| <input type="checkbox"/> 245 Tort Product Liability                               |  | <b>PRISONER PETITIONS</b>  |  | <input type="checkbox"/> 890 Other Statutory Actions                                   |
| <input type="checkbox"/> 290 All Other Real Property                              |  | <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus:   |  |  |
|   |  | <input type="checkbox"/> 530 General                                     |  |  |
|   |  | <input type="checkbox"/> 535 Death Penalty                               |  |  |
|   |  | <input type="checkbox"/> 540 Mandamus & Other                            |  |  |
|   |  | <input type="checkbox"/> 550 Other                                       |  |  |

**VI. ORIGIN**

(PLACE AN X IN ONE BOX ONLY)

|  |   |  |   |  |
|--|---|--|---|--|
| <input type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) |
|--|---|--|---|--|

|   |   |
|---|---|
| <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Judge from Magistrate Judgment |
|---|---|

**VI. REQUESTED IN COMPLAINT:**CHECK IF THIS IS A CLASS ACTION  
 UNDER F.R.C.P. 23

## DEMAND \$

Check YES only if demanded in complaint  
**JURY DEMAND:**  YES  NO**VIII. RELATED CASE(S) IF ANY**

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

06/21/00

SIGNATURE OF ATTORNEY OF RECORD

JUN 22 2000

J. H. M. Enterprises, Inc.  
1200 Valmont Drive, N.W.  
Williamsport, Lycoming County, Pennsylvania.

Vernice Lee Statts  
489 East Academy Street  
Hughesville, Lycoming County, Pennsylvania.

Sherrill J. Mulligan and Denis A. Mulligan  
568 North Locust Street  
Hazleton, Luzerne County, Pennsylvania.

Robert E. Krapf  
305 East Broad Street  
Tamaqua, Schuylkill County, Pennsylvania.

Ute L. Hetland Clark  
1022 Villa Ridge Drive  
Las Vegas, Clark County, Nevada..

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Northland Insurance Company

: CIVIL ACTION

v.

Lincoln General Ins. Co., JHM :  
Enterprises, Inc. Vernice L. :  
Statts, Robert E. Krapf and Ute L. Hetland Clark, et. al. :

NO. **00-CV-3174**

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus -- Cases brought under 28 U.S.C. §2441 through §2255. ( )
- (b) Social Security -- Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration -- Cases required to be designated for arbitration under Local Civil Rule 8. ( )
- (d) Asbestos -- Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management -- Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management -- Cases that do not fall into any one of the other tracks. (XX)

06/21/00

(Date)

Attorney-at-law

Northland Insurance Company

Attorney for

(Civ. 660)

12/91

## UNITED STATES DISTRICT COURT

THE EASTERN DISTRICT OF PENNSYLVANIA - DESIGNATION FORM to be used by COUNSEL to indicate the category of the case for the use or assignment to appropriate calendar.

00-CV-3194

Sess of Plaintiff: \_\_\_\_\_

Sess of Defendant: \_\_\_\_\_

of Accident, Incident or Transaction: \_\_\_\_\_

(Use Reverse Side for Additional Space)

Is this case involve multidistrict litigation possibilities?

Yes  No

RELATED CASE, IF ANY:

C Number: \_\_\_\_\_

Judge: \_\_\_\_\_

Date Terminated: \_\_\_\_\_

Cases are deemed related when yes is answered to any of the following questions.

Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes  No

Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes  No

Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes  No

II: (Place  in ONE CATEGORY ONLY)

Federal Question Cases:

- Indemnity Contract, Marine Contract, and All Other Contracts
- FELA
- Jones Act-Personal Injury
- Antitrust
- Patent
- Labor-Management Relations
- Civil Rights
- Habeas Corpus
- Securities Act(s) Cases
- Social Security Review Cases
- All other Federal Question Cases  
(Please specify)

B. Diversity Jurisdiction Cases:

1.  Insurance Contract and Other Contracts
2.  Airplane Personal Injury
3.  Assault, Defamation
4.  Marine Personal Injury
5.  Motor Vehicle Personal Injury
6.  Other Personal Injury (Please specify)
7.  Products Liability
8.  Products Liability — Asbestos
9.  All other Diversity Cases  
(Please specify)

✓ ARBITRATION CERTIFICATION

(Check appropriate Category)

I, David Ira Rosenbaum

counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 06/22/00

Attorney-at-Law

52859

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 6/22/00

Attorney-at-Law

52859

Attorney I.D.#

v. Duy (8/89)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA  
U.S. CLERK'S OFFICE

FAXSIMILE COVER PAGE

DATE: 6-23-00

TIME: 9:30 AM

PLEASE DELIVER TO: David Rosenbaum, Esq.

FIRM NAME: \_\_\_\_\_

FROM: Trish Jones TELEPHONE #: (267) 299-7072

RE: CIVIL ACTION: 00-cv-3174

CAPTION: Northland Ins. Co. v. Lincoln General, et al FILE DATE: 6-22-00

PLEASE COMPLETE THE ATTACHED ARBITRATION CERTIFICATION AS SOON AS POSSIBLE IN ACCORDANCE WITH LOCAL CIVIL RULE 53.2.3, WHICH WAS EFFECTIVE SEPTEMBER 13, 1999, INCREASING THE ARBITRATION LIMIT TO \$150,000, AND FAX IT TO OUR OFFICE.

THANK YOU.

CLERK'S OFFICE FAX NUMBERS: (267) 299-7136 or (267) 299-7116

JUN-23-2000 09:59

P.01

**RUTHRAUFF & ARMBRUST, P.C.**  
1601 Market Street  
16th Floor  
Philadelphia, Pennsylvania 19103

---

**PH: (215) 567-3700**

**FAX: (215) 587-0409**

**CONFIDENTIALITY NOTICE**

This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender which is protected by the attorney-client privilege. The information is intended only for the use of the individual or entity named below. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for the return of the documents.

**FACSIMILE TRANSMITTAL**

**TO:** Ms. Trish Jones

**FAX NUMBER:** (267) 299-7136

**FROM:** David Ira Rosenbaum, Esquire

**DATE:** June 23, 2000

---

Sorry for the confusion. Apparently we only have the old forms in our file. Could you send me the current form so that I can update our form file and avoid recurrence of this problem. You can either mail it to me or fax it at above number/address.

---

If you do not receive all the pages, please contact Lisa Palumbo (215/567-3676)

## WJ- RETURN OF SERVICE

Service of the Summons and Complaint was made by me!

Date

7-2-00

Name of Server

JEFFREY R. MELTZER

Title

PRIVATE DETECTIVE

Check one box below to indicate appropriate method of service

Served personally upon the defendant. Place where served

1200 VALLAMONT DRIVE, N.W.  
WILLIAMSPORT, PA. 17701

Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left:

Other (specify)

FILED  
MAY 17 2000  
E. KIRKING, Clerk  
Dep. Clerk

## STATEMENT OF SERVICE FEES

| Travel           | Services         | Total              |
|------------------|------------------|--------------------|
| 10 <sup>00</sup> | 40 <sup>00</sup> | \$50 <sup>00</sup> |

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 7-2-00

Date

Signature of Server

P.O. BOX 1992  
WILLIAMSPORT, PA. 17703-1992

Address of Server

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

W4

CCU-3174

3

## RETURN OF SERVICE

|  |                   |
|--|-------------------|
| Service of the Summons and Complaint was made by me <sup>1</sup> | Date<br>7-11-2000 |
| Name of Server<br><i>Nicholas L. Vinci</i>                       | Title             |

Check one box below to indicate appropriate method of service

Served personally upon the defendant. Place where served 31 PARK LANE  
Sheriff T. Mulligan GILBERTSVILLE PA

Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left:

~~FILED~~

Other (specify) \_\_\_\_\_

JUL 17 2000

*MICHAEL J. KUNZ, Clerk*  
*Dep. Clerk*  
*By*

## STATEMENT OF SERVICE FEES

| Travel | Services | Total |
|--------|----------|-------|
|        |          |       |

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 7-11-2000  
Date

Signature of Server

*Nicholas L. Vinci*  
Nicholas L. Vinci  
3534 Byrne Road  
Philadelphia PA 19154-3315

Address of Server

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

## RETURN OF SERVICE

|  |                   |
|--|-------------------|
| Service of the Summons and Complaint was made by me <sup>1</sup> | Date<br>7-11-2000 |
| Name of Server<br><i>Nicholas L. Vinci</i>                       | Title             |

Check one box below to indicate appropriate method of service

Served personally upon the defendant. Place where served 31 Park Lane  
Gilbertsville Pa

Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left:

Sherrill T. Mulligan wife of Denis A Mulligan

Other (specify) \_\_\_\_\_

**FILED**

JUL 17 2000

MICHAEL E. KUNZ, Clerk  
 By \_\_\_\_\_  
 Dep. Clerk

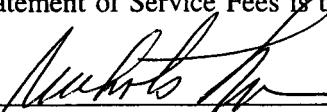
## STATEMENT OF SERVICE FEES

| Travel | Services | Total |
|--------|----------|-------|
|        |          |       |

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 7-11-2000  
 Date

  
 Signature of Server

Nicholas L. Vinci  
 3534 Byrne Road  
 Philadelphia PA 19154-3315

Address of Server

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

## RETURN OF SERVICE

|  |                |
|--|----------------|
| Service of the Summons and Complaint was made by me <sup>1</sup> | Date           |
| <i>JEFFREY R. MELTZER</i>  | <i>7-11-00</i> |
| Name of Server   | Title          |
| <i>PRIVATE DETECTIVE</i>   |                |

Check one box below to indicate appropriate method of service

Served personally upon the defendant. Place where served 489 EAST ACADEMY ST.  
HUGHESVILLE, PA 17737-1805

Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left:

---

Other (specify) \_\_\_\_\_

---

*FILED*

*JUL 17 2000*  
*By MICHAEL E. KUHN, Clerk*  
*Dep. Clerk*

## STATEMENT OF SERVICE FEES

| Travel        | Services      | Total            |
|---------------|---------------|------------------|
| <u>150.00</u> | <u>300.00</u> | <u>\$ 450.00</u> |

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 7-11-00  
Date

*Jeffrey R. Meltzer*  
Signature of Server  
P.O. BOX 1992  
WILLIAMSPORT, PA 17703-1992  
Address of Server

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

## RETURN OF SERVICE

|  |                         |
|--|-------------------------|
| Service of the Summons and Complaint was made by me <sup>1</sup> | Date<br>07/05/00 - 1428 |
| Name of Server<br><i>DONALD W Good</i>                           | Title<br><i>Inv.</i>    |

Check one box below to indicate appropriate method of service

Served personally upon the defendant. Place where served *Timothy KIRK, V-Pres. Claims*  
*Lincoln Gen. Ins. Co., 5550 Whiteford Rd, York PA 17402-0136*

Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left:

FILED

Other (specify)

JUL 19 2000

MICHAEL E. KUNZ, Clerk

By *HD*, Dep. Clerk

## STATEMENT OF SERVICE FEES

| Travel | Services | Total |
|--------|----------|-------|
|        |          |       |

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 07/05/00  
 Date  
 COMMONWEALTH OF PENNSYLVANIA }  
 COUNTY OF DAUPHIN } SS:  
 Subscribed and sworn to before me  
 this 7 day of July 2000

Signature of Server

*DWG Good*  
*571 Cambria Av*  
*Hbg PA 17111-4524*

Address of Server

1) *No one who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.*

## NOTARIAL SEAL

JULIA R. ERB, Notary Public  
 Susquehanna Twp., Dauphin County  
 My Commission Expires Nov. 5, 2001

## RETURN OF SERVICE

|  |                         |
|--|-------------------------|
| Service of the Summons and Complaint was made by me <sup>1</sup> | Date<br>July 19, 2000   |
| Name of Server<br>Kathleen S. Fox                                | Title<br>Process Server |

Check one box below to indicate appropriate method of service

Served personally upon the defendant. Place where served 10220 Villa Ridge Dr.  
Las Vegas, Nevada 89134

Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  
Name of person with whom the summons and complaint were left:

**FILED**

|                        |
|------------------------|
| Other (specify)        |
| JUL 31 2000            |
| MICHAEL E. KUNZ, Clerk |
| By _____ Dep. Clerk    |

## STATEMENT OF SERVICE FEES

| Travel | Services | Total |
|--------|----------|-------|
|        |          |       |

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 7-21-00  
Date \_\_\_\_\_

Signature of Server Kathleen S. Fox

618 S. 6th St., Las Vegas, Nevada 89101  
Address of Server

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

6

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**FILED**

AUG - 2 2000

MICHAEL E. KUNZ, Clerk  
*JK*  
Dep. Clerk

NORTHLAND INSURANCE COMPANY

CIVIL ACTION

v.

LINCOLN GENERAL INSURANCE et al.

NO. 00-3174

ORDER

AND NOW, this 2<sup>nd</sup> day of August, 2000, in accordance with the court's procedure for random reassignment of cases, it is hereby

ORDERED that the above-captioned case is reassigned from the calendar of the Honorable William H. Yohn, Jr. to the calendar of the Honorable Petrese B. Tucker.

**RECEIVED**

FOR THE COURT:

JAMES T. GILES  
Chief Judge

TUCKER, PETRESE B.

ATTEST:

*Michael E. Kunz*

MICHAEL E. KUNZ  
Clerk of Court

COPIES BY MAIL ON: 8/2/02

TO: DAVID A. Rosenbaum

## RETURN OF SERVICE

|  |                                    |
|--|------------------------------------|
| Service of the Summons and Complaint was made by me <sup>1</sup> | Date <u>7/27/00</u>                |
| Name of Server<br><u>John E. Ghatz</u>                           | Title <u>Private Investigation</u> |

Check one box below to indicate appropriate method of service

Served personally upon the defendant. Place where served 305 E. Broad St. Tamaqua Pa.  
at 5:15 P.M. on 7/27/00. **FILED**

AUG 08 2000

Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

**MICHAEL A. KUNZ, Clerk**

Name of person with whom the summons and complaint were left: (initials) Dep. Clerk

Other (specify) Four attempts of service were made.  
9 hours time plus 400 miles were expended.  
9 x 35.00 = \$315. - . 400 miles x .40,35 = \$140. -

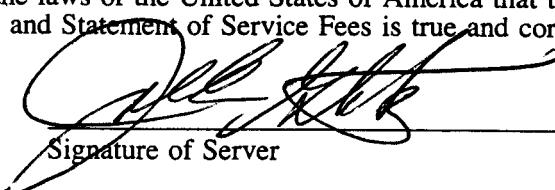
## STATEMENT OF SERVICE FEES

| Travel          | Services        | Total           |
|-----------------|-----------------|-----------------|
| <u>\$140. -</u> | <u>\$315. -</u> | <u>\$455. -</u> |

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 7/31/00  
Date

  
Signature of Server

PoBox 108, West Pittston Pa. 18643  
Address of Server

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

(8)

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

ENTERED

AUG 17 2000

CLERK OF COURT

NORTHLAND INSURANCE COMPANY, :  
Plaintiff :  
: :  
v. : No. 00-W-3174  
: :  
LINCOLN GENERAL INSURANCE :  
COMPANY, et al., :  
Defendants :  
:

AUG 1 1 2000

MICHAEL D. PAP

By \_\_\_\_\_

STIPULATION FOR EXTENSION OF TIME

AND NOW comes, Plaintiff Northland Insurance Company, by and through its counsel, Ruthrauff & Armbrust, and Defendant Lincoln General Insurance Company, by and through its counsel, McNees, Wallace and Nurick, and stipulate that Defendant Lincoln General Insurance Company will not be required to respond to the complaint until August 18, 2000.

W  
\_\_\_\_\_  
David Ira Rosenbaum, Esq.  
Ruthrauff & Armbrust, P.C.  
1601 Market Street, 16<sup>th</sup> Floor  
Philadelphia, PA 19103  
(215) 567-3700

J H Rudd  
\_\_\_\_\_  
Jonathan H. Rudd, Esq.  
McNees, Wallace and Nurick  
100 Pine Street, P.O. Box 1166  
Harrisburg, PA 17108  
(717) 237-5405

APPROVED BY THE COURT:

Petrese B. Tucker  
\_\_\_\_\_  
PETRESE B. TUCKER, J.

COPIES BY MAIL ON:

8/7/00  
\_\_\_\_\_  
D. Rosenbaum  
Q. Rudd

7/25/2000

\*\*\*\*\* -COMM. JOURNAL- \*\*\*\*\* DATE AUG-17-2000 \*\* TIME 11:43 \*\*\*\*\*

MODE = MEMORY TRANSMISSION

START=AUG-17 11:41

END=AUG-17 11:43

FILE NO.=014

| STN NO. | COMM. | ABBR NO. | STATION NAME/TEL NO. | PAGES   | DURATION |
|---------|-------|----------|----------------------|---------|----------|
| 001     | OK    | *        | 917172375300         | 002/002 | 00:00:40 |

\*\*\*\*\* - \*\*\*\*\* - \*\*\*\*\*

# Fax

**Name:** Jonathan Rudd, Esquire  
**Fax:** 717-237-5300  
**Phone:** 717-237-5405  
**From:** Chambers of Judge Petrese B. Tucker  
**Date:** August 17, 2000  
**Re:** Northland Insurance Company vs. Lincoln General Insurance  
**Pages:** 1

\*\*\*\*\* -COMM. \*\*\*\*\* DATE AUG-17-2000 \*\* TIME 11:39 \*\*\*\*\*

MODE = MEMORY TRANSMISSION

START=AUG-17 11:38

END=AUG-17 11:39

FILE NO.=013

| STN NO. | COMM. | ABBR NO. | STATION NAME/TEL NO. | PAGES   | DURATION |
|---------|-------|----------|----------------------|---------|----------|
| 001     | OK    | *        | 92155870409          | 002/002 | 00:00:28 |

\*\*\*\*\* - \*\*\*\*\* - \*\*\*\*\*

2:00-cv-03174

DAVID IRA ROSENBAUM, Esq.  
RUTHRAUFF & ARMBRUST, P.C.  
1601 MARKET STREET  
PHILADELPHIA, PA 19103-1913

adr

Copy of  
Doc #9

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

NORTHLAND INSURANCE COMPANY,  
Plaintiff

v.

LINCOLN GENERAL INSURANCE  
COMPANY, et al.,  
Defendants

: No. 00-W-3174

ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2000, it is hereby  
ordered that this action is dismissed for improper venue.

BY THE COURT:

## CERTIFICATE OF SERVICE

I, Jonathan H. Rudd, Esquire, hereby certify that on this  
18<sup>th</sup> day of August, 2000, a true and correct copy of the foregoing  
document was served by first-class, United States mail, postage  
prepaid, upon the following:

David Ira Rosenbaum, Esq.  
Ruthrauff & Armbrust, P.C.  
1601 Market Street, 16<sup>th</sup> Floor  
Philadelphia, PA 19103

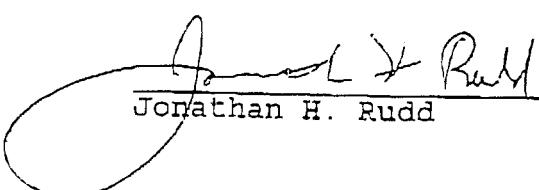
J.H.M. Enterprises, Inc.  
1200 Walmont Drive, N.W.  
Williamsport, PA 17701

Vernice Lee Statts  
489 East Academy Street  
Hughesville, PA 17737-1805

Robert E. Krapf  
305 East Broad Street  
Tamaqua, PA 18252-2129

Ute L. Hetland Clark  
1022 Villa Ridge Drive  
Las Vegas, NV

Dennis A. Mulligan  
568 North Locust Street  
Hazleton, PA 18201-4925

  
\_\_\_\_\_  
Jonathan H. Rudd

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

RECEIVED  
SEP 14 2000

TUCKER, PETRESE B.

NORTHLAND INSURANCE COMPANY, **F I L E D**

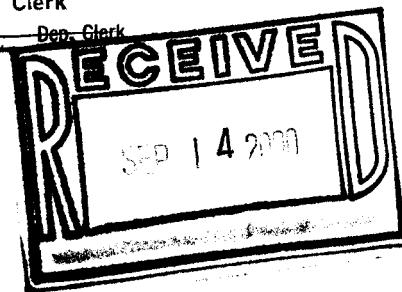
Plaintiff, **SEP 15 2000**

v.

MICHAEL E. KUNZ, Clerk

By *[Signature]* Dep. Clerk

LINCOLN GENERAL INSURANCE COMPANY, :  
J.H.M. ENTERPRISES, INC., VERNICE L. :  
STATTS, ROBERT E. KRAPF and UTE L. :  
HETLAND CLARK, as Administrators of the :  
Estate of Karin Clifford and ROBERT E. KRAPF :  
and PATRICIA R. CLIFFORD, as Administrators :  
of the Estate of Robert R. Clifford, SHERRILL J. :  
MULLIGAN, DENIS A. MULLIGAN, :  
Defendants. :



00-3174.

---

**NOTICE OF PARTIAL DISMISSAL, STIPULATION AND ORDER**

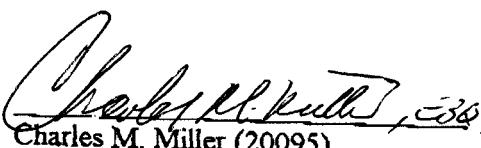
Plaintiff, Northland Insurance Company, by its undersigned attorneys hereby dismisses pursuant to Fed. R. Civ. P. 41(a) its Complaint against defendants Robert E. Krapf and Ute L. Hetland Clark, as Administrators of the Estate of Karin Clifford and Robert E. Krapf and Patricia R. Clifford as Administrators of the Estate of Robert R. Clifford only (collectively, "the Dismissed Defendants").

IT IS HEREBY STIPULATED AND AGREED that the Dismissed Defendants will be bound by any decision or judgment that the court may reach in the above captioned lawsuit with respect to the obligations of Northland Insurance Company and Lincoln General Insurance Company to provide insurance coverage for any and all liability or settlements in the following underlying action: Robert E. Krapf and Ute L. Hetland Clark as Administrators of the Estate of Karin Clifford v. Statts, C.A. No. S-650-1996 (C.P. Schuylkill Co.) ("the Underlying Action"). It is further agreed that the Dismissed Defendants have no obligation whatsoever to repay or refund any monies paid by Northland Insurance Company as a part of the settlement of the Underlying Action.

Dated: Sept 14, 2000

RUBRIGHT, DOMALAKES, TROY &  
MILLER  
P.O. Box 9, Law Building  
Frackville, PA 17931  
(570) 874-1109

Attorneys for Defendants Robert E. Krapf and  
Ute L. Hetland Clark, as Administrators of the  
Estate of Karin Clifford and Robert E. Krapf  
and Patricia R. Clifford as Administrators of  
the Estate of Robert R. Clifford

By:   
Charles M. Miller (20095)

RUTHRAUFF & ARMBRUST, P.C.  
1601 Market Street  
16<sup>th</sup> Floor  
Philadelphia, PA 19103  
(215) 567-3700

Attorneys for Plaintiff Northland Insurance  
Company

By:   
David Ira Rosenbaum  
(52589)

Of Counsel:

Ira S. Lipsius  
SCHINDEL, FARMAN & LIPSIUS, LLP  
225 West 34<sup>th</sup> Street  
New York, NY 10122  
(212) 563-1710

Approved: 

COPIES BY MAIL ON: 9/15/00  
TO: D. Rosenbaum, J. Budd  
C. Miller

\*\*\*\*\* -COMM. JOURNAL- \*\*\*\*\* DATE SEP-15-2000 \*\*\* TIME 10:12 \*\*\*\*\*

MODE = MEMORY TRANSMISSION

START=SEP-15 10:11 END=SEP-15 10:12

FILE NO.=099

| STN NO. | COMM. | ABBR NO. | STATION NAME/TEL NO. | PAGES   | DURATION |
|---------|-------|----------|----------------------|---------|----------|
| 001     | OK    | *        | 917172375300         | 003/003 | 00:00:52 |

\*\*\*\*\* - \*\*\*\* - \*\*\*\*\*

2:00-cv-03174

JONATHAN H. RUDD, Esq.  
MC NEES, WALLACE & NURICK  
100 PINE STREET  
P.O. BOX 1166  
HARRISBURG, PA 17108-1166

adr

FAX 717-237-5300

PBT

11

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

NORTHLAND INSURANCE COMPANY, :  
: Plaintiff, :  
: v. : C.A. No. 00-CU-3174  
: :  
LINCOLN GENERAL INSURANCE COMPANY, :  
J.H.M. ENTERPRISES, INC., VERNICE L. :  
STATTS, ROBERT E. KRAPF and UTE L. :  
HETLAND CLARK, as Administrators of the :  
Estate of Karin Clifford and ROBERT E. KRAPF :  
and PATRICIA R. CLIFFORD, as Administrators :  
of the Estate of Robert R. Clifford, SHERRILL J. :  
MULLIGAN, DENIS A. MULLIGAN, :  
: Defendants.

FILED D

SEP 18 2000

CLERK'S OFFICE, EASTERN DISTRICT OF PENNSYLVANIA  
*CRW*

**PLAINTIFF NORTHLAND INSURANCE COMPANY'S  
ANSWER IN OPPOSITION TO DEFENDANT LINCOLN  
INSURANCE COMPANY'S MOTION TO DISMISS FOR IMPROPER VENUE**

For the reasons set forth in detail in the attached Memorandum of Law, plaintiff Northland Insurance Company respectfully requests that this Court deny Defendant's Motion to Dismiss for Improper Venue. Alternatively, if the Court finds that venue is not properly vested in the Eastern District of Pennsylvania, it should transfer the case to the United States District Court for the Middle

RECEIVED

SEP 20 2000

TUCKER, PETRESE B.

District of Pennsylvania as opposed to dismissing the case outright.

By:

*David Ira Rosenbaum, Esquire*

David Ira Rosenbaum, Esquire (52859)

Ruthrauff & Armbrust, P.C.

1601 Market Street

16<sup>th</sup> Floor

Philadelphia, PA 19103

(215) 567-3700

Of Counsel:

Ira Lipsius, Esquire

Schindel Farman & Lipsius

225 West 34<sup>th</sup> Street

New York, NY 10122

Attorneys for Plaintiff Northland Insurance  
Company

Dated: September 18, 2000

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

(11)

NORTHLAND INSURANCE COMPANY, :  
: Plaintiff, :  
: v. : C.A. No. 00-CU-3174  
: :  
LINCOLN GENERAL INSURANCE COMPANY, :  
J.H.M. ENTERPRISES, INC., VERNICE L. :  
STATTS, ROBERT E. KRAPF and UTE L. :  
HETLAND CLARK, as Administrators of the :  
Estate of Karin Clifford and ROBERT E. KRAPF :  
and PATRICIA R. CLIFFORD, as Administrators :  
of the Estate of Robert R. Clifford, SHERRILL J. :  
MULLIGAN, DENIS A. MULLIGAN, :  
: Defendants.

FILED  
12/10/2000  
CLERK, EASTERN DISTRICT OF PENNSYLVANIA  
CDP:MM

**PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT'S  
MOTION TO DISMISS FOR IMPROPER VENUE**

**I. INTRODUCTION**

This matter involves the interpretation of two insurance policies; Northland Insurance Company ("Northland") seeks an order declaring that Lincoln General Insurance Company provides primary coverage for the liability, if any, of the mutual insureds of the two companies.

The underlying accident occurred in Schuylkill County in 1995 which, at that time, formed part of the Eastern District of Pennsylvania. Since 1998, of course, Schuylkill has been part of the Middle District. (Public L. 105-277, 112 Stat. 2681-116; 144 Cong. Rec. H. 7262).

In fact, the matter is properly venued in this Court. In the event, however, that the Court agrees that the more appropriate venue is the United States District Court for the Middle District of

Pennsylvania, the Court should, instead of dismissing the action, cure the defect by transferring the case pursuant to 28 U.S.C. §1406(a).

## **II. STATEMENT OF FACTS**

Northland filed this action for declaratory relief on June 22, 2000. (A copy of the complaint is attached as Exhibit A). The case arises out of the multi-vehicle accident on State Route 309 in Rush Township, Schuylkill County, on November 17, 1995. Robert and Karin Clifford were killed and Sherill and Denis Mulligan injured as a result of the collision.

Lawsuits were filed in the Court of Common Pleas of Schuylkill County by the Mulligans (S-1689 of 1997) and on behalf of the estate of Karin Clifford (Robert E. Krapf and Ute L. Hetland Clark, Administrators) and Robert R. Clifford (Robert E. Krapf and Patricia R. Clifford, Administrators) (S-650 of 1996). The defendants were Vernice Lee Statts, a truck driver, her employer J.H.M. Enterprises, and the motor carrier to which the J.H.M. tractor-trailer rig was leased, Woolever Brothers Transportation, Inc.

Northland issued a liability policy to Woolever; Lincoln General issued its policy to J.H.M. The issue before the Court is the relative priority of the two policies, i.e., which provides primary coverage and which excess coverage. Northland initially named the various plaintiffs and administrators as defendants in the declaratory judgment action but the administrations of the Clifford estates are, or will, no longer be defendants in the action. (Attached as Exhibit B is the Notice of Partial Dismissal, Stipulation and Order). The Mulligans presently reside within the Eastern District of Pennsylvania.

### III. ARGUMENT

#### A. THIS SUITE IS PROPERLY VENUED IN THE EASTERN DISTRICT OF PENNSYLVANIA

The venue statute, 28 U.S.C. §1331 provides, in relevant part:

(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

...

(c) For purposes of venue under this chapter, a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. In a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.

Pursuant to §1331(a)(1) venue is proper in a diversity case in a judicial district where any defendant resides, so long as all the defendants reside in the same state.

All of the remaining defendants reside in Pennsylvania. (The only non-Pennsylvania defendant had been Ute Clark, one of the Administrators). Accordingly, venue is appropriate in the Eastern District so long as at least one of the defendants resides in that district.

Denis and Sherill Mulligan currently reside in Gilbertville which is in Berks County. ( A copy of the summonses are attached as Exhibit C). Berks County, of course, is in the Eastern District.

In addition, under §1391(c) corporation, such as Lincoln General and J.H.M., are deemed to reside in any judicial district in which they are subject to personal jurisdiction. Thus both Lincoln General and J.H.M. also "reside" in the Eastern District. See, e.g., Jones v. National Seating Co., 1990 U.S. Dist. Lexis 7795 (E.D. Pa. 1990), aff'd 941 F.2d 1201 (3d Cir. 1991). Venue is, therefore, proper under §1391(a).

In addition, the transfer of Schuylkill County to the Middle District in 1998, does not change the fact that the underlying accident occurred in the Eastern District of Pennsylvania as it was constituted in 1995. Venue is, therefore, also appropriate under §1391(a)(2).

In either event, Lincoln General has failed to meet its burden that the venue is improper Grissinger v. Young, 1998 U.S. Dist. Lexis 9898 (E.D. Pa. 1998).

B. IF VENUE IN THE EASTERN DISTRICT IS IMPROPER, THE APPROPRIATE CURE IS A TRANSFER TO THE MIDDLE DISTRICT

If the Court determines that this matter was improperly venued in the Eastern District of Pennsylvania, the Court has the discretion to transfer the case to another district where venue is proper, when doing so better serves the interests of justice. 28 U.S.C. § 1406(a); at its discretion, may transfer the action rather than dismiss to. Grissinger, supra; Wade v Wilkes-Barre Housing Auth., 1999 U.S. Dist. Lexis 5584 (E.D. Pa. Apr. 19,1999); see also Lahm v. Wagner, 776 F Supp. 114, 115 (E.D.N.Y. 1991) ("[E]ven where plaintiff has improperly attempted to lay venue, the court may cure the defect by a transfer.").

In Jennings v. University of North Carolina, 1999 U.S. Dist. LEXIS 6967 (N.D. Ill. Apr. 26, 1999), the action was originally brought in Illinois. Although the defendants asked the court to dismiss the action for improper venue, the court elected to transfer the action to the Middle District of North Carolina. Noting that “Section 1406(a)’s ‘interest of justice’ requirement focuses on the efficient administration of the court system and not the private interests of the parties,” id. at \*3 (citation omitted); the court went on to explain why justice would be served by a transfer, rather than a dismissal:

The administration of justice is served more efficiently when the action is litigated in the forum that is “closer to the action.” ... North Carolina is the forum closest to the sites of the alleged acts giving rise to the claims in this case....Therefore, there is a greater public interest in having the dispute resolved in the Middle District of North Carolina than in the Northern District of Illinois.

Further, transferring the case to North Carolina would promote judicial economy by eliminating any dispute as to whether the court has jurisdiction over defendants. Thus, the case could proceed to trial more quickly in North Carolina than it would in Illinois. Therefore, rather than dismissing the case and forcing the plaintiffs to incur the additional costs of re-filing in North Carolina, it is in the interest of justice and judicial economy to transfer this action to the Middle District of North Carolina. Id. at \*6-7 (citations omitted).

In the present case, the automobile accident giving rise to the claims asserted in the complaint occurred in Schuylkill County, which is located in the Middle District of Pennsylvania (although, at the time of the accident, Schuylkill County was in the Eastern District). At this time, all defendants reside in Pennsylvania, and the Middle District would therefore have no difficulty in asserting jurisdiction over them. Under the circumstances, the interest of judicial economy and justice favor, not a dismissal which would compel plaintiff to incur unnecessary costs in re-filing, but a simple transfer to the Middle District.

**IV. CONCLUSION**

For the foregoing reasons, plaintiff Northland respectfully requests this Court to deny defendant Lincoln's motion to dismiss for improper; or, alternatively, that the Court transfer the action to the Middle District of Pennsylvania.

By: David Ira Rosenbaum, Esquire  
David Ira Rosenbaum, Esquire (52859)  
Ruthrauff & Armbrust, P.C.  
1601 Market Street  
16<sup>th</sup> Floor  
Philadelphia, PA 19103  
(215) 567-3700

Of Counsel:

Ira Lipsius, Esquire  
Schindel Farman & Lipsius  
225 West 34<sup>th</sup> Street  
New York, NY 10122

Attorneys for Plaintiff Northland Insurance  
Company

Dated: September 18, 2000

# **EXHIBIT A**

The JS-44 civil cover sheet and the information contained here neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I (a) PLAINTIFFS**

Northland Insurance Company  
1295 Northland Drive  
St. Paul, MN 55120-1146

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF** Ramsey  
(EXCEPT IN U.S. PLAINTIFF CASES)

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

David Ira Rosenbaum, Esquire  
Ruthrauff & Armbrust, P.C.  
1601 Market Street, 16th Floor  
Philadelphia, PA 19103 (215) 567-3675

**DEFENDANTS**

Lincoln General Insurance Co.  
3350 Whiteford Road  
York, PA

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT** York

(IN U.S. PLAINTIFF CASES ONLY)  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
TRACT OF LAND INVOLVED (see attached list for  
other defendants)

**II. BASIS OF JURISDICTION**

(PLACE AN X IN ONE BOX ONLY)

|  |   |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)                     |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

|   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

This is a declaratory judgment action premised upon diversity jurisdiction under 28 U.S.C. Section 1332.

**V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)**

| CONTRACT  | TORTS  | FORFEITURE/PENALTY  | BANKRUPTCY   | OTHER STATUTES   |
|---|--|---|--|--|
| <input checked="" type="checkbox"/> 110 Insurance                                 | PERSONAL INJURY  | PERSONAL INJURY   | <input type="checkbox"/> 422 Appeal 28 USC 158                   | <input type="checkbox"/> 400 State Reapportionment                                     |
| <input type="checkbox"/> 120 Marine   | <input type="checkbox"/> 310 Airplane                        | <input type="checkbox"/> 362 Personal Injury—Med Malpractice            | <input type="checkbox"/> 423 Withdrawal 28 USC 157               | <input type="checkbox"/> 410 Antitrust   |
| <input type="checkbox"/> 130 Miller Act   | <input type="checkbox"/> 315 Airplane Product Liability      | <input type="checkbox"/> 365 Personal Injury—Product Liability          | PROPERTY RIGHTS  | <input type="checkbox"/> 430 Banks and Banking   |
| <input type="checkbox"/> 140 Negotiable Instrument                                | <input type="checkbox"/> 320 Assault, Libel & Slander        | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 820 Copyrights                          | <input type="checkbox"/> 450 Commerce/ICC Rates/etc.                                   |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment    | <input type="checkbox"/> 330 Federal Employers' Liability    | <input type="checkbox"/> 370 Other Fraud                                | <input type="checkbox"/> 830 Patent                              | <input type="checkbox"/> 460 Deportation   |
| <input type="checkbox"/> 151 Medicare Act   | <input type="checkbox"/> 340 Marine Product Liability        | <input type="checkbox"/> 371 Truth in Lending                           | <input type="checkbox"/> 840 Trademark                           | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations            |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 345 Marine Product Liability        | <input type="checkbox"/> 380 Other Personal Property Damage             | SOCIAL SECURITY  | <input type="checkbox"/> 810 Selective Service   |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits        | <input type="checkbox"/> 350 Motor Vehicle                   | <input type="checkbox"/> 385 Property Damage Product Liability          | <input type="checkbox"/> 861 HIA (1395f)                         | <input type="checkbox"/> 850 Securities/Commodities/Exchange                           |
| <input type="checkbox"/> 160 Stockholders' Suits                                  | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 390 Other Personal Injury                      | <input type="checkbox"/> 862 Black Lung (923)                    | <input type="checkbox"/> 875 Customer Challenge 12 USC 3410                            |
| <input type="checkbox"/> 190 Other Contract                                       | <input type="checkbox"/> 360 Other Personal Injury           | LABOR   | <input type="checkbox"/> 863 DWDC/DWW (405(g))                   | <input type="checkbox"/> 891 Agricultural Acts   |
| <input type="checkbox"/> 195 Contract Product Liability                           |  | <input type="checkbox"/> 710 Fair Labor Standards Act                   | <input type="checkbox"/> 864 SSD Title XVI                       | <input type="checkbox"/> 892 Economic Stabilization Act                                |
| REAL PROPERTY   | CIVIL RIGHTS   | <input type="checkbox"/> 720 Labor/Mgmt. Relations                      | <input type="checkbox"/> 865 RSI (405(g))                        | <input type="checkbox"/> 893 Environmental Matters                                     |
| <input type="checkbox"/> 210 Land Condemnation                                    | <input type="checkbox"/> 441 Voting                          | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act     | FEDERAL TAX SUITS  | <input type="checkbox"/> 894 Energy Allocation Act                                     |
| <input type="checkbox"/> 220 Foreclosure  | <input type="checkbox"/> 442 Employment                      | <input type="checkbox"/> 740 Railway Labor Act                          | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 895 Freedom of Information Act                                |
| <input type="checkbox"/> 230 Rent Lease & Ejectment                               | <input type="checkbox"/> 443 Housing/Accommodations          | <input type="checkbox"/> 790 Other Labor Litigation                     | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609         | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |
| <input type="checkbox"/> 240 Torts to Land  | <input type="checkbox"/> 444 Welfare                         | <input type="checkbox"/> 791 Emp. Ret. Inc. Security Act                |  | <input type="checkbox"/> 950 Constitutionality of State Statutes                       |
| <input type="checkbox"/> 245 Tort Product Liability                               | <input type="checkbox"/> 440 Other Civil Rights              |   |  | <input type="checkbox"/> 890 Other Statutory Actions                                   |
| <input type="checkbox"/> 290 All Other Real Property                              |  |   |  |  |

**VI. ORIGIN**

(PLACE AN X IN ONE BOX ONLY)

|  |   |  |   |   |   |
|--|---|--|---|---|---|
| <input type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation |
|--|---|--|---|---|---|

Appeal to District  
Judge from Magistrate Judgment

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION  
 UNDER F.R.C.P. 23**DEMAND \$**

Check YES only if demanded in complaint:  
**JURY DEMAND:**  YES  NO

**VIII. RELATED CASE(S) (See instructions): IF ANY**

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

06/21/00

J. H. M. Enterprises, Inc.  
1200 Valmont Drive, N.W.  
Williamsport, Lycoming County, Pennsylvania.

Vernice Lee Statts  
489 East Academy Street  
Hughesville, Lycoming County, Pennsylvania.

Sherrill J. Mulligan and Denis A. Mulligan  
568 North Locust Street  
Hazleton, Luzerne County, Pennsylvania.

Robert E. Krapf  
305 East Broad Street  
Tamaqua, Schuylkill County, Pennsylvania.

Ute L. Hetland Clark  
1022 Villa Ridge Drive  
Las Vegas, Clark County, Nevada..

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Northland Insurance Company

: CIVIL ACTION

v.

Lincoln General Ins. Co., JHM :  
Enterprises, Inc. Vernice L. : NO.  
Statts, Robert E. Krapf and Ute L. Hetland Clark, et. al.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus -- Cases brought under 28 U.S.C. §2441 through §2255. ( )
- (b) Social Security -- Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration -- Cases required to be designated for arbitration under Local Civil Rule 8. ( )
- (d) Asbestos -- Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management -- Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management -- Cases that do not fall into any one of the other tracks. (xx)

06/21/00

(Date)

Attorney-at-law

Northland Insurance Company

Attorney for

(Civ. 660)

12/91

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

---

NORTHLAND INSURANCE COMPANY, :  
: Plaintiff, :  
: v. : C.A. No. 00-CW-3174  
: :  
LINCOLN GENERAL INSURANCE COMPANY, :  
J.H.M. ENTERPRISES, INC., VERNICE L. :  
STATTS, ROBERT E. KRAPF and UTE L. :  
HETLAND CLARK, as Administrators of the :  
Estate of Karin Clifford and ROBERT E. KRAPF :  
and PATRICIA R. CLIFFORD, as Administrators :  
of the Estate of Robert R. Clifford, SHERRILL J. :  
MULLIGAN, DENIS A. MULLIGAN, :  
: Defendants.

---

The plaintiff Northland Insurance Company ("Northland"), for its complaint against the Defendants herein, alleges as follows:

**THE PARTIES AND JURISDICTION**

1. Northland is a Minnesota corporation with its principal place of business in Minnesota.
2. Upon information and belief, Lincoln General Insurance Company is a Pennsylvania corporation with its principal place of business at 3350 Whiteford Road, York, Pennsylvania.
3. Upon information and belief, J.H.M. Enterprises, Inc. ("JHM") is a Pennsylvania corporation with its offices located at 1200 Valmont Drive, N.W., Williamsport, Lycoming County, Pennsylvania, and it engaged in the business of transporting merchandise and products via trailer in the Commonwealth of Pennsylvania.

4. Upon information and belief, Vernice Lee Statts ("Statts") is an adult individual residing at 489 East Academy Street, Hughesville, Lycoming County, Pennsylvania.
5. Upon information and belief, Sherrill J. Mulligan and Denis A. Mulligan, are adult individuals who reside at 568 North Locust Street, Hazleton, Luzerne County, Pennsylvania.
6. Upon information and belief, Robert E. Krapf, is an individual residing at 305 East Broad Street, Tamaqua, Schuylkill County, Pennsylvania, and Ute L. Hetland Clark, is an individual residing at 1022 Villa Ridge Drive, Las Vegas, Nevada.
7. Upon information and belief, Krapf and Clark are the Administrators of the Estate of Karin Clifford, deceased, having been appointed by the Register of Wills of Schuylkill County, Pennsylvania, on November 22, 1995.
8. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332 as the amount in controversy exceed the sum of value of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, and is between citizens of different states and pursuant to 28 U.S.C. §2201.
9. Venue is appropriate in this forum pursuant to 28 U.S.C. §1391(a) & (c).

**GENERAL ALLEGATIONS**

10. On November 17, 1995 Statts was an employee and/or agent of JHM.
11. On November 17, 1995 Statts was dispatched by JHM to pick up a load on behalf of JHM.
12. On November 17, 1995, Statts was driving a 1979 Freightliner with Serial Number CA213HM160222 ("the Tractor") and a 1980 Great Dane Trailer ("the Trailer").

13. On November 17, 1995, the Tractor and Trailer driven by Stats was involved in an accident with a vehicle operated by Robert Clifford and a vehicle operated by Sherill Mulligan ("the Accident").
14. At the time of the Accident, the Tractor and Trailer were owned by Jay McCormick of JHM.
15. At the time of the Accident, Stats was not operating the Tractor or Trailer in the business of Woolever Brothers Transportation Inc. ("Woolever").
16. Krapf and Clark; as administrators of the Estate of Karin Clifford, and Krapf and Patricia R. Clifford as administrator of the Estate of Robert R. Clifford have brought a lawsuit against JHM, Vince Lee Stats, Woolever among others ("the Clifford action") arising out of the accident.
17. The accident resulted in the deaths of Karin Clifford and Robert R. Clifford.
18. The plaintiffs in the Clifford Action have demanded a total of \$2 million.
19. Sherrill J. Mulligan and Denis A. Mulligan have brought a lawsuit against JHM, Vince Lee Stats and Woolever ("the Mulligan action") arising out of the accident.
20. The plaintiffs in the Mulligan action have demanded \$175,000.
21. Lincoln General issued a policy of insurance bearing policy number PAP 1857700495 to JHM that was in effect at the time of the Accident (the "Lincoln General Policy").
22. Northland issued a policy of insurance bearing policy number TF209197 to Woolever that was in effect at the time of the Accident (the "Northland Policy").

**COUNT ONE**

23. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 19 with the same force and effect as though fully set forth at length herein.
24. The Lincoln General Policy lists the Tractor as a covered auto.
25. The Lincoln General Policy provides coverage for the Tractor.
26. The Lincoln General Policy lists the Trailer as a covered auto.
27. The Lincoln General Policy provides coverage for the Trailer
28. Pursuant to the terms of the Lincoln General Policy, JHM is an insured under the Lincoln policy.
29. Pursuant to the terms of the Lincoln General Policy, Statts is an insured under the Lincoln policy.
30. Pursuant to the terms of the Lincoln General Policy, Woolever is an insured under the Lincoln policy.
31. The Lincoln General Policy provides coverage for the liability, if any, of JHM, Statts and Woolever arising from the Accident.

WHEREFORE, Northland requests a judicial declaration that:

1. Lincoln General provides coverage for JHM, Statts and Woolever in the Clifford Action and the Mulligan Action (collectively "the Underlying Actions").
2. Any coverage obligation owed by the Northland policy in the Underlying Actions is excess to the Lincoln policy and is not triggered until the Lincoln policy is exhausted.

3. Northland is entitled to reimbursement from Lincoln for all costs in defending the Underlying Actions.

**COUNT TWO**

32. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 28 with the same force and effect as though fully set forth at length herein.
33. The Lincoln Policy and the Northland Policy both contain the following "other insurance" provision:

**5. OTHER INSURANCE ---PRIMARY AND EXCESS INSURANCE PROVISIONS**

- a. This Coverage Form's Liability Coverage is primary for any covered "auto" while hired or borrowed by you and used exclusively in your business as a "trucker" and pursuant to operating rights granted to you by a public authority. This Coverage Form's Liability Coverage is excess over any other collectible insurance for any covered "auto" while hired or borrowed from you by another "trucker". However, while a covered "auto" which is a "trailer" is connected to a power unit, this Coverage Form's Liability Coverage is:
  - (1) On the same basis, primary or excess, as for the power unit if the power unit is a covered "auto".
  - (2) Excess if the power unit is not a covered "auto".
- b. Any Trailer Interchange Coverage provided by this Coverage Form is primary for any covered "auto".
- c. Except as provided in paragraphs a. and b. above, this Coverage Form provides primary insurance for any covered "auto" you own and excess insurance for any covered "auto" you don't own.
- d. Regardless of the provisions of paragraphs a, b and c above, this Coverage Form's Liability Coverage is primary for any liability assumed under an "insured contract".

- e. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering the same basis.

34. At the time of the Accident, the Tractor and Trailer were being operated in the business of JHM.

35. At the time of the Accident, the Tractor and Trailer were not being operated in the business of Woolever.

36. The Lincoln General Policy provides primary coverage.

37. Any coverage provided by Northland for the Accident is excess to the coverage provided by Lincoln General.

WHEREFORE, Northland requests a judicial declaration that:

1. Lincoln General provides coverage for JHM, Statts and Woolever in the Clifford Action and the Mulligan Action (collectively "the Underlying Actions").
2. Any coverage obligation owed by the Northland policy in the Underlying Actions is excess to the Lincoln policy and is not triggered until the Lincoln policy is exhausted.
3. Northland is entitled to reimbursement from Lincoln for all costs in defending the Underlying Actions.

**COUNT THREE**

35. Northland has spent \$ 51,769.94 defending Woolever in the Clifford Action and the Mulligan Action.

1. Lincoln General provides coverage for JHM, Statts and Woolever in the Clifford Action and the Mulligan Action (collectively "the Underlying Actions").
2. Any coverage obligation owed by the Northland policy in the Underlying Actions is excess to the Lincoln policy and is not triggered until the Lincoln policy is exhausted.
3. Northland is entitled to reimbursement from Lincoln for all costs in defending the Underlying Actions.

By:



\_\_\_\_\_  
David Ira Rosenbaum, Esquire (52859)  
Ruthrauff & Armbrust, P.C.  
1601 Market Street  
16<sup>th</sup> Floor  
Philadelphia, PA 19103  
(215) 567-3700

Of Counsel:

Ira Lipsius, Esquire  
Schindel Farman & Lipsius  
225 West 34<sup>th</sup> Street  
New York, NY 10122

Attorneys for Plaintiff Northland Insurance Company

Dated: June 22, 2000

# **EXHIBIT B**

SUMMONS IN A CIVIL ACTION

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NORTHLAND INSURANCE COMPANY

v.

LINCOLN GENERAL INSURANCE COMPANY; J.H.M. ENTERPRISES, INC.; VERNICE L. STATTS; ROBERT E. KRAPF and UTE L. HETLAND CLARK, as Administrators of the Estate of Karin Clifford and ROBERT E. KRAPF and PATRICIA R. CLIFFORD, as Administrators of the Estate of Robert R. Clifford, SHERRILL J. MULLIGAN and DENIS A. MULLIGAN

CIVIL ACTION NO. 00-3174

TO: (NAME AND ADDRESS OF DEFENDANT)

Denis A. Mulligan  
31 Park Lane  
Gilbertville, PA

**YOU ARE HEREBY SUMMONED** and required to serve upon

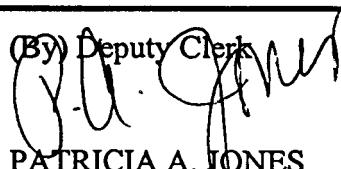
Plaintiff's Attorney (Name and Address)

David Ira Rosenbaum, Esq.  
Ruthrauff & Armbrust, P.C.  
1601 Market St., 16th flr.  
Philadelphia, PA 19103

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Michael E. Kunz, Clerk of Court

Date: 6/22/00

(By) Deputy Clerk  
  
PATRICIA A. JONES

## RETURN OF SERVICE

|  |                            |
|--|----------------------------|
| Service of the Summons and Complaint was made by me <sup>1</sup> | Date<br>7-11-2000          |
| Name of Server<br><i>Nicholas L. Vinci</i>                       | Title<br>FILED JUL 17 2000 |

Check one box below to indicate appropriate method of service

Served personally upon the defendant. Place where served 31 Park Lane  
Gilbertsville Pa

Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left:

Sherill J. Mulligan wife of Denis A. Mulligan

Other (specify) \_\_\_\_\_

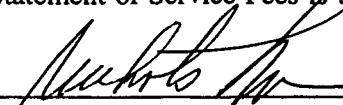
## STATEMENT OF SERVICE FEES

| Travel | Services | Total |
|--------|----------|-------|
|        |          |       |

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 7-11-2000  
Date

  
Signature of Server

Nicholas L. Vinci  
3534 Byrne Road  
Philadelphia PA 19154-3315

Address of Server

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

SUMMONS IN A CIVIL ACTION

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NORTHLAND INSURANCE COMPANY

v.

LINCOLN GENERAL INSURANCE COMPANY; J.H.M.  
ENTERPRISES, INC.; VERNICE L. STATTS; ROBERT E.  
KRAPF and UTE L. HETLAND CLARK, as Administrators  
of the Estate of Karin Clifford and ROBERT E. KRAPF and  
PATRICIA R. CLIFFORD, as Administrators of the Estate of  
Robert R. Clifford, SHERRILL J. MULLIGAN and DENIS A.  
MULLIGAN

CIVIL ACTION NO. 00-3174

TO: (NAME AND ADDRESS OF  
DEFENDANT)

Sherrill J. Mulligan  
31 Park Lane  
Gilbertville, PA

YOU ARE HEREBY SUMMONED and required to serve upon

Plaintiff's Attorney (Name and Address)

David Ira Rosenbaum, Esq.  
Ruthrauff & Arinbrust, P.C.  
1601 Market St., 16th flr.  
Philadelphia, PA 19103

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Michael E. Kunz, Clerk of Court

Date: 6/22/00

(By) Deputy Clerk  
  
PATRICIA A. JONES

## RETURN OF SERVICE

|  |                                   |
|--|-----------------------------------|
| Service of the Summons and Complaint was made by me <sup>1</sup> | Date<br>7-11-2000                 |
| Name of Server<br><i>Nicholas L. Vinci</i>                       | Title<br><b>FILED JUL 17 2000</b> |

Check one box below to indicate appropriate method of service

Served personally upon the defendant. Place where served 31 Park Lane  
Sheriff J. Mulligan Gilbertsville Pa

Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left:

Other (specify) \_\_\_\_\_

## STATEMENT OF SERVICE FEES

| Travel | Services | Total |
|--------|----------|-------|
|        |          |       |

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 7-11-2000  
Date

Signature of Server

*Nicholas L. Vinci*  
Nicholas L. Vinci  
3534 Byme Road  
Philadelphia PA 19154-3315

Address of Server

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

# **EXHIBIT C**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

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NORTHLAND INSURANCE COMPANY, :  
: Plaintiff, :  
v. :  
LINCOLN GENERAL INSURANCE COMPANY, :  
J.H.M. ENTERPRISES, INC., VERNICE L. :  
STATTS, ROBERT E. KRAPF and UTE L. :  
HETLAND CLARK, as Administrators of the :  
Estate of Karin Clifford and ROBERT E. KRAPF :  
and PATRICIA R. CLIFFORD, as Administrators :  
of the Estate of Robert R. Clifford, SHERRILL J. :  
MULLIGAN, DENIS A. MULLIGAN, :  
Defendants. :

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**NOTICE OF PARTIAL DISMISSAL, STIPULATION AND ORDER**

Plaintiff, Northland Insurance Company, by its undersigned attorneys hereby dismisses pursuant to Fed. R. Civ. P.41(a) its Complaint against defendants Robert E. Krapf and Ute L. Hetland Clark, as Administrators of the Estate of Karin Clifford and Robert E. Krapf and Patricia R. Clifford as Administrators of the Estate of Robert R. Clifford only (collectively, "the Dismissed Defendants").

IT IS HEREBY STIPULATED AND AGREED that the Dismissed Defendants will be bound by any decision or judgment that the court may reach in the above captioned lawsuit with respect to the obligations of Northland Insurance Company and Lincoln General Insurance Company to provide insurance coverage for any and all liability or settlements in the following underlying action: Robert E. Krapf and Ute L. Hetland Clark as Administrators of the Estate of Karin Clifford v. Statts, C.A. No. S-650-1996 (C.P. Schuylkill Co.) ("the Underlying Action"). It is further agreed that the Dismissed Defendants have no obligation whatsoever to repay or refund any monies paid by Northland Insurance Company as a part of the settlement of the Underlying Action.

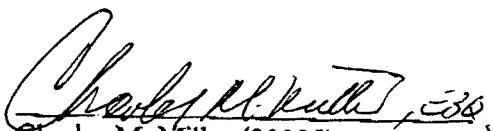
08/17/00 THU 15:14 FAX 215587 09

Ruthrauff / Armbrust

Dated: Sept 14, 2000

RUBRIGHT, DOMALAKES, TROY &  
MILLER  
P.O. Box 9, Law Building  
Frackville, PA 17931  
(570) 874-1109

Attorneys for Defendants Robert E. Krapf and  
Ute L. Hetland Clark, as Administrators of the  
Estate of Karin Clifford and Robert E. Krapf  
and Patricia R. Clifford as Administrators of  
the Estate of Robert R. Clifford

By:   
Charles M. Miller (20095)

RUTHRAUFF & ARMBRUST, P.C.  
1601 Market Street  
16<sup>th</sup> Floor  
Philadelphia, PA 19103  
(215) 567-3700

Attorneys for Plaintiff Northland Insurance  
Company

By:   
David Ira Rosenbaum  
(52589)

Of Counsel:

Ira S. Lipsius  
SCHINDEL, FARMAN & LIPSIUS, LLP  
225 West 34<sup>th</sup> Street  
New York, NY 10122  
(212) 563-1710

Approved: \_\_\_\_\_

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

---

NORTHLAND INSURANCE COMPANY, :  
: Plaintiff, :  
: v. : C.A. No. 00-CU-3174  
:  
LINCOLN GENERAL INSURANCE COMPANY, :  
J.H.M. ENTERPRISES, INC., VERNICE L. :  
STATTS, ROBERT E. KRAPF and UTE L. :  
HETLAND CLARK, as Administrators of the :  
Estate of Karin Clifford and ROBERT E. KRAPF :  
and PATRICIA R. CLIFFORD, as Administrators :  
of the Estate of Robert R. Clifford, SHERRILL J. :  
MULLIGAN, DENIS A. MULLIGAN, :  
: Defendants.

S U I T E 300  
10/18/2000  
W.D. of Pa., Clerk's Office  
Clerk, David Ira Rosenbaum

---

**CERTIFICATE OF SERVICE**

I, David Ira Rosenbaum, hereby certify that on September 18, 2000, I caused a true and correct copy of foregoing Plaintiff Northland Insurance Company's Answer in Opposition to Defendant Lincoln Insurance Company's Motion to Dismiss for Improper Venue to be sent via First Class Mail, postage pre-paid upon the following:

Jonathan H. Rudd, Esquire  
McNees, Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108

Charles M. Miller, Esquire  
Rubright, Domalakes, Troy & Miller  
P.O. Box 9  
Law Building  
Frackville, PA 17931

Joseph R. Musto, Esquire  
10 W. Fourth Street  
Williamsport, PA 17701-6206

*David Ira Rosenbaum, Esq.*  
David Ira Rosenbaum

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

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|  |   |                     |
|--|---|---------------------|
| NORTHLAND INSURANCE COMPANY,                     | : |                     |
|  | : |                     |
| Plaintiff,                                       | : |                     |
|  | : |                     |
| v.   | : | C.A. No. 00-CU-3174 |
|  | : |                     |
| LINCOLN GENERAL INSURANCE COMPANY,               | : |                     |
| J.H.M. ENTERPRISES, INC., VERNICE L.             | : |                     |
| STATTS, ROBERT E. KRAPF and UTE L.               | : |                     |
| HETLAND CLARK, as Administrators of the          | : |                     |
| Estate of Karin Clifford and ROBERT E. KRAPF     | : |                     |
| and PATRICIA R. CLIFFORD, as Administrators      | : |                     |
| of the Estate of Robert R. Clifford, SHERRILL J. | : |                     |
| MULLIGAN, DENIS A. MULLIGAN,                     | : |                     |
|  | : |                     |
| Defendants.                                      | : |                     |

---

**ORDER**

AND NOW, this \_\_\_ day of \_\_\_\_, 2000, upon consideration of the Motion of Defendant Lincoln Insurance Company to Dismiss for Improper Venue and the response thereto, if any, it is hereby ORDERED that the Motion is DENIED.

BY THE COURT:

---

J.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

---

NORTHLAND INSURANCE COMPANY, :  
:  
Plaintiff, :  
:  
v. : C.A. No. 00-CU-3174  
:  
LINCOLN GENERAL INSURANCE COMPANY, :  
J.H.M. ENTERPRISES, INC., VERNICE L. :  
STATTS, ROBERT E. KRAPF and UTE L. :  
HETLAND CLARK, as Administrators of the :  
Estate of Karin Clifford and ROBERT E. KRAPF :  
and PATRICIA R. CLIFFORD, as Administrators :  
of the Estate of Robert R. Clifford, SHERRILL J. :  
MULLIGAN, DENIS A. MULLIGAN, :  
:  
Defendants. :

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**ORDER (Alternative)**

AND NOW, this \_\_\_\_ day of \_\_\_\_, 2000, upon consideration of the Motion of Defendant Lincoln Insurance Company to Dismiss for Improper Venue and the response thereto, if any, it is hereby ORDERED that the Clerk is Directed to Transfer this Case to the United States District Court for the Middle District of Pennsylvania.

BY THE COURT:

---

J.

PBT

12

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

FILED

NORTHLAND INSURANCE COMPANY, :  
Plaintiff : OCT 3 2001  
: MICHAEL J. KOND, Clerk  
v. : No. 00-W-3174  
LINCOLN GENERAL INSURANCE :  
COMPANY, et al., :  
Defendants :  
Oct. 3, 2001

**DEFENDANT LINCOLN GENERAL INSURANCE COMPANY'S  
BRIEF IN RESPONSE TO PLAINTIFF'S BRIEF IN OPPOSITION  
TO LINCOLN GENERAL INSURANCE COMPANY'S  
MOTION TO DISMISS FOR IMPROPER VENUE**

In its response, Northland requests in the alternative that this action be transferred to the Middle District of Pennsylvania rather than dismissed for improper venue. Lincoln General has no objection to the Court transferring the action to the Middle District of Pennsylvania rather than dismissing it for improper venue.

Northland also contends that dismissal is not warranted since it meets the requirements of 28 U.S.C. §1391. Northland contends it meets the requirements of Section 1391 by having dismissed four of the original Defendants. Northland contends that since one of the remaining Defendants now resides in the Eastern District of Pennsylvania, venue is proper in the Eastern District.

Based on the allegations in the Complaint, venue is not

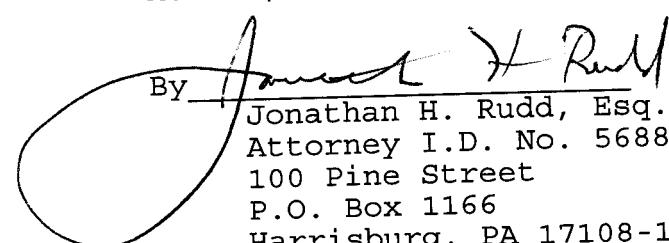
proper in the Eastern District. Initially, all of the Defendants do not reside in Pennsylvania. Additionally, Northland alleges that Defendants "Sherrill J. Mulligan and Dennis A. Mulligan are adult individuals who reside at 568 North Locust Street, Hazleton, Luzerne County, Pennsylvania." See Complaint at ¶5. Luzerne County is located within the Middle District of Pennsylvania. Northland now contends that contrary to the allegations in the Complaint, the Mulligans live in Berks County.

This Court should determine the issue of venue as of the time the complaint was filed, not based on subsequent acts taken by the Plaintiff in an attempt to create venue in this Court. This action is appropriately venued in the Middle District of Pennsylvania, and Lincoln General requests that this action be transferred to the Middle District.

Respectfully submitted,

MCNEES, WALLACE & NURICK

BY

  
Jonathan H. Rudd, Esq.  
Attorney I.D. No. 56880  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
(717) 237-5405

Attorneys for Defendant Lincoln  
General Insurance Company

Date: 9/29/06

CERTIFICATE OF SERVICE

I, Jeannine Pettigrew, Secretary to Jonathan H. Rudd, Esquire, hereby certify that on this 24th day of September, 2000, a true and correct copy of the foregoing document was served by first-class, United States mail, postage prepaid, upon the following:

David Ira Rosenbaum, Esq.  
Ruthrauff & Armbrust, P.C.  
1601 Market Street, 16<sup>th</sup> Floor  
Philadelphia, PA 19103

J.H.M. Enterprises, Inc.  
1200 Walmont Drive, N.W.  
Williamsport, PA 17701

Vernice Lee Statts  
489 East Academy Street  
Hughesville, PA 17737-1805

Charles M. Miller, Esq.  
Rubright Domalakes Troy & Miller  
Law Building  
Frackville, PA 17931

Dennis A. Mulligan  
568 North Locust Street  
Hazleton, PA 18201-4925

MICHAEL E. TUCKER, PETRESE B.  
CDM

Jeannine Pettigrew

RECEIVED

OCT 04 2000

TUCKER, PETRESE B.

(13)

PBT  
**IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA**

**NORTHLAND INSURANCE CO.**

**Plaintiff,**

v.

**LINCOLN GENERAL INSURANCE  
COMPANY, et al.**

**Defendants.**

**CIVIL ACTION**

**NO. 00-3174**

By *MICHAEL E. KUNZ, Clerk*  
*Dep. Clerk*

**FILED**

**MAR 29 2001**

**MEMORANDUM AND ORDER**

TUCKER, J.

Presently before this Court is a Motion to Dismiss for Improper Venue (Document No. 9) filed by Defendant Lincoln General Insurance Company ("Defendant") on August 21, 2000. For the reasons set forth below, upon consideration of the motion, the response of Plaintiff Northland Insurance Company ("Plaintiff") (Doc. 11), and Defendant's reply (Doc. 12), this Court finds that venue is improperly laid in the Eastern District of Pennsylvania. However, in the interests of justice, this Court will transfer this action to the Middle District of Pennsylvania under 28 U.S.C. §1406 to cure the defect rather than dismiss the action.

Plaintiff in this case seeks a declaratory judgment determining which party provides primary liability insurance coverage for individuals mutually insured by both Plaintiff and Defendant. The underlying multi-vehicle accident occurred on State Route 309 Rush Township, in Schuylkill County, on November 17, 1995. At the time, Schuylkill County formed part of the Eastern District of Pennsylvania; however, in 1998, it became part of the Middle District of Pennsylvania. The

**ENT**

**MAR**

**CLERK**

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

NORTHLAND INSURANCE CO.

Plaintiff,

v.

LINCOLN GENERAL INSURANCE  
COMPANY, et al.

Defendants.

CIVIL ACTION

NO. 00-3174

F I L E D

MAR 29 2001

*Michael E. Kunz*, Clerk  
by *[Signature]* Dep. Clerk

O R D E R

AND NOW, this 28<sup>th</sup> day of March, 2001, upon consideration of Defendant's Motion to Dismiss for Improper Venue, or in the Alternative, to Transfer Venue (Document No. 9), Plaintiff's Response thereto (Doc. 11), and Defendant's Reply (Doc. 12), it is hereby ORDERED and DECREED that Defendant's Motion is DENIED.

It is FURTHER ORDERED that this action is transferred to the United States District Court for the Middle District of Pennsylvania, pursuant to 28 U.S.C. §1406. The Clerk shall transfer the record to that district and terminate this case from this Court's docket.

3-30-01 Copies mailed

BY THE COURT:

D. S. Rosenthal

J. H. M. Enterprises, Inc.

V. L. Stotts

S. J. Mulligan

D. a. Mulligan

Legal

Com. Clk.

*Petrese B. Tucker*  
Hon. Petrese B. Tucker, U.S.D.J.

*Myed J. Rudd*